

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)	
)	
Retention by Broadcasters of)	MB Docket No. 04-232
Program Recordings)	
)	
To: The Commission		

Comments

NM Licensing, LLC ("NextMedia")¹ hereby opposes the proposals set out in the Notice for Proposed Rulemaking, MB Docket No. 04-232, FCC 04-145, released July 7, 2004 ("NPRM"). As demonstrated below, the proposal to require broadcasters to keep recordings of their programs is unnecessary, unduly burdensome and infringes First Amendment freedoms.

1. Unnecessary Regulation

The vast majority of broadcasters have never committed an indecency offense and are unlikely to ever be faced with a bona fide indecency complaint relating to their programming. The problem the Commission seeks to address is caused by a small number of broadcasters who have chosen inappropriate content for their programs. There is no reason all broadcasters should be unduly burdened or penalized by the inappropriate actions of a few.

¹ The licensee's broadcast interests are attached as Exhibit 1.

The Commission's stated purpose for requiring a recording or transcript of all material aired during the hours of 6 a.m. and 10 p.m. is to provide the Commission a complete record for enforcement proceedings. This has not been a serious problem in the past. According to a letter from Chairman Michael K. Powell to the Hon. John D. Dingell, dated March 2, 2004, for the period between 2000 and 2002, the Commission received 14,379 complaints covering 598 programs and denied or dismissed only 169 complaints for the lack of a tape, transcript, or significant excerpts. Thus, a little over one percent of the total number of indecency complaints filed were dismissed for lack of a tape or transcript. As the NPRM recognizes, many complainants are able to provide enough detail for the Commission to evaluate whether enforcement action is warranted, without a recording or transcript.² Moreover, the Commission has stated that sufficient context for adjudication of a complaint has been made where an exact transcript could not be provided (See *Citicasters Co., Licensee of Station KSJO(FM), San Jose, California*, 15 FCC Rcd 19095 (EB 2000) and *Emmis Radio License Corp.*, FCC 04-62 (rel. Apr. 4, 2004). The remedy proposed in the NPRM is out of proportion to the problem the rule seeks to address. Requiring 13,476 AM, FM and FM Educational radio stations to record 79 million hours of programming per year is hardly a reasonable response to the small number of indecency complaints that lack sufficient detail for adjudication.³

2. The Cost of Recording or Transcription

Imposition of this proposed rule would force broadcasters to expend a significant capital expense for equipment, such as recording machines or transcription devices.

² See NPRM FCC 04-145 released July 7, 2004, at paragraph 6.

³ See <http://www.fcc.gov/mb/audio/totals/bt040331.html>

Furthermore, broadcasters would have to pay for the personnel responsible for operating and maintaining such equipment. As noted by other commenters, there are only a few commercially viable alternatives currently available that would permit broadcasters to record/transcribe and store anywhere from 960 to 1140 hours of programming on a regular basis. These expenditures are not warranted in the case where a broadcaster has not violated any of the Commission's rules.

3. First Amendment Implication

Lastly, broadcasters have First Amendment rights regarding program content. This proposed rule imposes significant additional costs on broadcasters' speech without serving any compelling governmental interest. The proposed rule's blunderbuss approach to indecency regulation is not narrowly tailored to legitimate regulatory objectives. The Commission should reject the proposed rule and vindicate broadcaster's free speech rights.

For the reasons stated above, NextMedia urges rejection of the proposed rule.

RESPECTFULLY SUBMITTED,



ELENI C. PANTARIDIS
Counsel for
NM Licensing, LLC

LEIBOWITZ & ASSOCIATES, P.A.
One SE Third Ave., Suite 1450
Miami, Florida 33131-1715
(305) 530-1322

EXHIBIT 1**BROADCAST INTERESTS**

as of 8/26/04

NM Licensing, LLC

Call Sign	Facility ID	Location
WJBR-FM	14374	Wilmington, DE
WERV-FM	73171	Aurora, IL
WRXQ(FM)	3959	Coal City, IL
WCCQ(FM)	10677	Crest Hill, IL
WDZ(AM)	53348	Decatur, IL
WDZQ(FM)	47004	Decatur, IL
WSOY(AM)	36945	Decatur, IL
WSOY-FM	36951	Decatur, IL
WWYW(FM)	3135	Dundee, IL
WJOL(AM)	62235	Joliet, IL
WSSR(FM)	62240	Joliet, IL
WCZQ(FM)	46942	Monticello, IL
WKRS(AM)	10450	Waukegan, IL
WXLC(FM)	10451	Waukegan, IL
WZSR(FM)	53505	Woodstock, IL
WXQL(FM)	41842	Carrollton, MI
WCEN-FM	60787	Hemlock, MI
WGER(FM)	20384	Saginaw, MI
WSGW(AM)	22674	Saginaw, MI
WTLZ(FM)	74093	Saginaw, MI
KTHX-FM	48685	Dayton, NV
KURK(FM)	64055	Reno, NV

Call Sign	Facility ID	Location
KJZS(FM)	13528	Sparks, NV
KRZQ-FM	48683	Sparks, NV
WQZL (FM)	47883	Belhaven, NC
WANG (AM)	47108	Havelock, NC
WANG-FM	47106	Havelock, NC
WKKO (FM)	47884	Jacksonville, NC
WQSL(FM)	28171	Jacksonville, NC
WXQR-FM	28172	Jacksonville, NC
WRNS-FM	36950	Kinston, NC
WRNS (AM)	36944	Kinston, NC
WDLX (AM)	64610	Washington, NC
WERO (FM)	64609	Washington, NC
WHBC(AM)	4489	Canton, OH
WHBC-FM	4488	Canton, OH
KKAJ-FM	11181	Ardmore, OK
KVSO(AM)	11182	Ardmore, OK
KTRX(FM)	88041	Dickson, OK
KLAK(FM)	36265	Durant, OK
KYNZ(FM)	58333	Lone Grove, OK
WFGO(FM)	52144	Erie, PA
WFNN(AM)	26611	Erie, PA
WJET(AM)	33769	Erie, PA
WRTS(FM)	55028	Erie, PA
WUSE(FM)	76244	Fairview, PA
WRKT(FM)	55063	North East, PA
WMYB(FM)	27265	Myrtle Beach, SC

Call Sign	Facility ID	Location
WQJM(AM)	24775	Myrtle Beach, SC
WKZQ-FM	24776	Myrtle Beach, SC
WYAV(FM)	36947	Myrtle Beach, SC
WRNN(FM)	53949	Socastee, SC
KMKT(FM)	77588	Bells, TX
KLLL-FM	36954	Lubbock, TX
KONE(FM)	26519	Lubbock, TX
KMMX(FM)	86	Tahoka, TX
KMAD-FM	54812	Whitesboro, TX
WIIL(FM)	28473	Kenosha, WI
WLIP(AM)	28478	Kenosha, WI
WEXT(FM)	53506	Sturtevant, WI
K226AL	86510	Carson City, NV
K286AG	81843	Carson City, NV
K240CA	49252	Crystal Bay, NV

NM Licensing LLC also presents programs over the facilities of Station KBTE (FM), Facility ID No. 1302, Tulia, Texas through a time brokerage arrangement.